

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TENNESSEE
AT KNOXVILLE

BOYD SMITH, NANCY SMITH,)
JOEY SMITH, JEFFREY SMITH,)
JILL SMITH, BESSIE HACKNEY,)
WILLIAM GRAY, PEGGY GRAY,)
GREGORY HOUSTON, ERNEST)
NICELY, and PATRICIA NICELY,)
Plaintiffs)
v.) No. 3:04-cv-591
FIRST CENTURY BANK, CONNIE)
DYER, SHERI LAWSON, and)
DELORIS GRAVES,)
Defendants)
and)
FIRST CENTURY BANK,)
Counter-Plaintiff)
v.)
BOYD SMITH, NANCY SMITH,)
JOEY SMITH and JEFFREY SMITH,)
Counter-Defendants)

ORDER

For the reasons set forth in the Memorandum Opinion this day passed to the Clerk for filing, it is hereby ORDERED that the motion for partial summary judgment filed by defendant First Century Bank (FCB) [Doc. 205] be, and the same hereby is, GRANTED to the extent that the cause of action set forth in Counts I (violation of the Racketeer Influenced and Corrupt Organizations Act [civil RICO], 18 U.S.C. §§ 1961, *et seq.*) in the [corrected] consolidated amended complaints is DISMISSED WITH PREJUDICE and the following claims are DISMISSED WITHOUT PREJUDICE against all individual defendants:

- (1) Violation of the Tennessee Identity Theft Deterrence Act of 1999, T.C.A. §§ 47-18-2101, *et seq.*, (Count IV);
- (2) Violation of the Tennessee Consumer Protection Act, T.C.A. §§ 47-18-101, *et seq.*, (Count V);
- (3) Violation of the Tennessee Financial Records Privacy Act, T.C.A. §§45-10-101, *et seq.*, (Count VI);
- (4) Breach of fiduciary duty (Count VII);
- (5) Conversion (Count VIII);
- (6) Negligence (Count IX); and
- (7) Equitable relief (Count X).¹

¹The court notes for the record that all other allegations of the amended complaint (Counts II, III, and XI) state causes of action only against FCB.

Additionally, in view of the above actions, the following motions are hereby DENIED AS MOOT:

1. Motion for summary judgment filed by defendant Deloris Graves [Doc. 145];
2. Motion for summary judgment filed by defendant Sheri Lawson [Doc. 203]; and
3. That prong of the motion to dismiss addressing the civil RICO cause of action filed by FCB [Doc. 56].²

Finally, the parties are hereby DIRECTED to amend the caption accordingly with respect to all future filings to indicate that the individual defendants are no longer parties to this litigation.

E N T E R :

s/ James H. Jarvis

UNITED STATES DISTRICT JUDGE

²The court recognizes that the other two prongs of FCB's motion to dismiss are still ripe for adjudication and anticipates addressing those issues in the very near future.